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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

Docket No. 96-128

**COMMENTS OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

The Inmate Calling Service Providers Coalition ("ICSPC") submits the following comments in response to the Commission's Public Notice, DRA 97-1673, released August 5, 1997, requesting comment on the remand issues in this proceeding ("Remand Notice"). ICSPC's comments are limited to a single issue raised by the emand Notice, compensation for inmate calls during the initial interim "flat rate" compensation period.

This issue was remanded to the Commission by the Court in response to a showing by the BOC petitioners that the Commission erred in excluding inmate payphones from interim compensation during the flat-rate period where such compensation is not paid pursuant to a contract. The BOCs argued that the Commission's decision to prescribe such interim compensation only for access code and subscriber 800 calls, regardless of

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whether a call was otherwise uncompensated, was at odds with Section 276's broad mandate to the Commission to ensure fair compensation for "each and every completed call." Initial Brief for Petitioners, 24-26. The Court agreed, holding that "[u]nder the regulations the Commission has promulgated, [inmate service providers] will receive no compensation for coinless calls made from inmate phones during the interim year. This appears to be blatantly inconsistent with the language of the statute." Illinois Public Telecommunications Association v. FCC, No. 96-1394, slip op. at 20 (D.C. Cir. July 1, 1997). The Court therefore remanded the issue to the Commission. Id.

At the outset, ICSPC does not oppose the Commission's tentative conclusion that the scope of the remand is limited to the narrow category of inmate calls which are routed to another carrier and for which "compensation is not paid pursuant to a contract," Remand Notice at 5. ICSPC wishes to make clear, however, that addressing interim compensation for this narrow category of inmate calls will not resolve the larger issue concerning fair compensation for calls that are handled by inmate service providers themselves and not routed to another carrier. The issue of whether the compensation scheme of the Commission's payphone orders ensures fair compensation for such calls is currently before the Court in a separate petition for review of the orders.

With respect to the limited category of calls addressed in the Remand Notice, inmate payphones should not be excluded from interim compensation. Although inmate payphones "are not capable of originating either access code or subscriber 800 calls,"¹

¹ Implementation of the Pay Telephone Reclassification and Compensation
(Footnote continued)

Section 276 compensation is not limited to such calls. Rather, Section 276 requires fair compensation for "each and every completed . . . call." Where inmate service providers must route calls to another carrier and are not otherwise compensated for such calls, the statutory requirement of fair compensation for every call clearly has not been satisfied. The Commission should therefore ensure that inmate service providers are compensated during the flat-rate period for all inmate payphone calls routed to another carrier for which the inmate service provider receives no compensation.

Such interim compensation must be available regardless of whether the inmate service provider is a BOC, a non-BOC LEC, or an independent provider. It is not uncommon for a confinement facility to enter into a contract with an inmate service provider only for the provision of equipment and the provision of intraLATA service, while entering into a separate contract with an interLATA carrier. In such an instance, when an inmate makes an interLATA call, the inmate service provider is required by the confinement facility to send the call to the facility's presubscribed interLATA carrier. There is no opportunity for the inmate service provider to negotiate compensation with the carrier. As a result, the inmate service provider is wholly uncompensated for the call. Non-BOC LECs and independent providers are, in this instance, no less entitled to interim compensation than the BOCs.

(Footnote continued)

Provisions of the Telecommunications Act of 1996, Order on Reconsideration, 11 FCC Rcd 21233, 21260 (1996).

In determining whether an inmate provider is entitled to interim compensation, the Commission's touchstone should be its per-call compensation rule, 47 C.F.R. § 64.1300. That rule provides in pertinent part:

(a) Except as provided herein, every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.

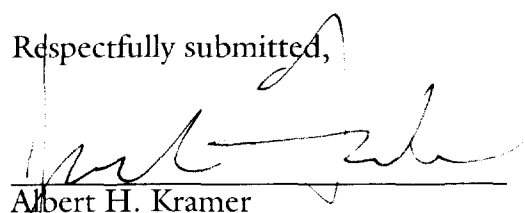
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(c) In the absence of an agreement as required by subsection (a) herein, the carrier obligated to compensate the payphone service provider shall do so at a per-call rate equal to its local coin rate at the payphone in question.²

Calls that qualify for permanent compensation under this rule also should qualify for interim compensation during the flat-rate period. In other words, for any call sent to a carrier for which an inmate service provider does not receive contractual compensation, the inmate service provider should be entitled to interim compensation.

Dated: August 26, 1997

Respectfully submitted,



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² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541, Appendix E, adding 47 C.F.R. § 64.1300 (1996).